



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R03-OAR-2014-0568; FRL-9995-39-Region 3]

Outer Continental Shelf Air Regulations; Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document, and listed in the appendix to the Federal OCS air regulations, are approved for incorporation into the compilation of state provisions that is incorporated by reference.

DATES: This rule is effective on **[Insert date 30 days after publication in the Federal Register]**. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0568. All documents in the docket are listed on the

<https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Mrs. Johansen can also be reached via electronic mail at johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 9, 2019 (84 FR 14078), EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve various Maryland air pollution control requirements for inclusion in the updated compilation of “State of Maryland Requirements Applicable to OCS Sources,” dated December 6, 2018, which is incorporated by reference into 40 CFR part 55. EPA did not receive any comments on the NPRM.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being

taken to update 40 CFR part 55, in accordance with the requirements at 40 CFR part 55.12, since the last consistency update occurred more than one year ago.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural

rules,¹ and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards. Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the April 9, 2019 NPRM and will not be restated here.

II. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the State of Maryland will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR), as amended through December 6, 2018. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into "State of Maryland Requirements Applicable to OCS Sources," dated May 6, 2016, which was incorporated by reference into 40 CFR part 55. *See* 81 FR 62393 (September 9, 2016).

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of "State of Maryland Requirements Applicable to OCS Sources," dated December 6, 2018, which is the compilation of provisions of the COMAR described in the amendments to 40 CFR part 55 set forth below. EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region III Office (please contact the

¹ Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule incorporating by reference sections of COMAR, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the state, and EPA notes that it does not impose substantial direct costs on tribal governments or preemptive tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information

collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060-0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.² The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

² OMB’s approval of the ICR can be viewed at www.reginfo.gov.

filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

EPA is incorporating the rules potentially applicable to sources for which the State of Maryland is the COA. The rules that EPA is incorporating are applicable provisions of COMAR.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 7, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

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(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, December 6, 2018.

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3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading “Maryland” to read as follows:

Appendix A to Part 55 – Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

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MARYLAND:

(a) * * *

(1) The following State of Maryland requirements are applicable to OCS Sources, December 6, 2018, State of Maryland–Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01–General Administrative Provisions (Effective as of December 6, 2018)

COMAR 26.11.02–Permits, Approvals, and Registrations (Effective as of February 12, 2018)

COMAR 26.11.03–Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)

COMAR 26.11.05–Air Pollution Episode System (Effective as of November 12, 2010)

COMAR 26.11.06–General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)

COMAR 26.11.07–Open Fires (Effective as of November 12, 2010)

COMAR 26.11.08–Control of Incinerators (Effective as of December 6, 2018)

COMAR 26.11.09–Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 6, 2018)

COMAR 26.11.13–Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)

COMAR 26.11.15–Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.16–Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.17–Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of April 09, 2018)

COMAR 26.11.19–Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)

COMAR 26.11.20–Mobile Sources (Effective as of November 12, 2010)

COMAR 26.11.26–Conformity (Effective as of November 12, 2010)

COMAR 26.11.35–Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)

COMAR 26.11.36–Distributed Generation (Effective as of February 12, 2018)

COMAR 26.11.39–Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

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